# STATE OF MICHIGAN

## COURT OF APPEALS

THIRD JUDICIAL CIRCUIT COURT,

August 2, 2007

UNPUBLISHED

Plaintiff-Appellant,

 $\mathbf{v}$ 

Nos. 267785; 267786 Wayne Circuit Court LC No. 00-004468-CK

JUDICIAL ATTORNEYS ASSOCIATION,

Defendant-Appellee.

Before: Davis, P.J., and Hoekstra and Donofrio, JJ.

PER CURIAM.

These consolidated appeals have been remanded to us by our Supreme Court for consideration "as on leave granted." Third Judicial Circuit Court v Judicial Attorneys Ass'n, 474 Mich 1006 (2006). In Docket No. 267786, plaintiff Third Judicial Circuit Court challenges the trial court's order granting the motion of defendant Judicial Attorneys Association (JAA) for an order to show cause why plaintiff should not be held in contempt for having failed to comply with the trial court's earlier order confirming an arbitration award in favor of JAA, by appointing a non-JAA member to fill a vacant family division referee position. In Docket No. 267785, plaintiff challenges the trial court's order rejecting its request for relief from the order confirming the arbitration award, holding plaintiff in civil contempt, and directing that the non-JAA member be terminated and a JAA member appointed to fill the vacancy. On appeal, plaintiff maintains that it is entitled to relief from the prior order requiring appointment of JAA members pursuant to MCR 2.612(C)(1)(d), (e), and (f), because it is void as a violation of the constitutional requirement of separation of powers and, under present circumstances, is inequitable and should not be enforced. Because we conclude that the prior order is not void because the trial court had jurisdiction to issue the order, and that the trial court's determinations regarding the timeliness of plaintiff's attack on the prior order and the equities regarding its enforcement were not an abuse of discretion, we affirm.

# I. Basic Facts and Procedural History

The facts relevant to this appeal, although of a long history, are not materially in dispute. Defendant JAA is a labor organization that represents Friend of the Court attorneys employed by plaintiff Third Judicial Circuit Court. Since 1982, the parties' employment relationship has been governed by a collective bargaining agreement (CBA). During renegotiation of the CBA in 1998, plaintiff reluctantly agreed to a provision, found at Article 12, § 2 of the CBA, affording defendant's members hiring preference over non-court employees with regard to the position of

domestic relations referee. Plaintiff, however, subsequently combined the duties of its juvenile and domestic relations referees into a single position, which it entitled "family division referee," and, immediately following implementation of the CBA in early 1999, appointed a non-JAA member attorney to the position of family division referee. Although this person was assigned to the juvenile division of plaintiff's newly created family court, another referee was shortly thereafter transferred from the court's juvenile division to its domestic relations division. Plaintiff, through its chief judge, thereafter appointed two additional non-JAA attorneys to the position of family division referee, again assigning them to the juvenile division.

Defendant promptly filed a grievance alleging that plaintiff was attempting to circumvent Article 12, § 2 of the CBA by calling the appointees something other than domestic relations referees, placing them in the juvenile division, then later transferring them to the domestic relations division as needed. The grievance was subsequently arbitrated and, in a ruling issued in January 2000, the arbitrator found that plaintiff's appointment of "outside" attorneys to the position of family division referee "constituted a circumvention of the requirements in Article 12, Section 2 and therefore, violated the collective bargaining Agreement." The arbitrator thus "sustained" the grievance as a violation of the CBA and, in order to rectify this violation, ordered that defendant's members be appointed to the "next three family court referee" vacancies.

Plaintiff timely filed suit to vacate the arbitrator's opinion and award. In July 2000, however, the trial court issued an opinion and order confirming the arbitration opinion and award. Plaintiff timely appealed the trial court's order, but subsequently entered into a stipulation of the parties to dismiss the appeal in June 2001.

In August 2004, plaintiff posted its first family division referee vacancy since issuance of the trial court's order confirming the arbitration award. Although at least one JAA-member attorney possessing the minimum qualifications set forth in the posting applied for the position, the juvenile division position was awarded to non-JAA private-practice attorney Charles Wilson in November 2004. The following month, defendant moved to enforce the July 2000 order confirming the arbitration award and for an order to show cause why plaintiff should not be held in contempt for violating that order by appointing Wilson to the position of family division referee. In its response to defendant's motion, plaintiff did not expressly deny its failure to comply with the arbitration award and confirming order. Rather, plaintiff argued that it was not required to award the position to a JAA member because none of the JAA members met the qualification of five years' juvenile court experience required by the court. Plaintiff thus argued that "it had no alternative but to consider non-JAA applicants meeting the requisite qualifications."

In a subsequently filed supplemental brief in opposition to defendant's motion filed in March 2005, plaintiff argued for the first time that it should be relieved from the arbitration award and confirming order pursuant to MCR 2.612(C)(1)(e) and (f). In seeking this relief,

<sup>&</sup>lt;sup>1</sup> Although later acknowledging that at least one JAA-member applicant met this qualification, plaintiff asserted that the member's experience in the area of juvenile-related law was simply too dated to warrant consideration.

plaintiff asserted that as a result of changes to the juvenile court rules made effective May 1, 2003, the responsibilities of juvenile court referees were "markedly different" and substantially more demanding than when the arbitration award was first rendered in January 2000. Plaintiff asserted that the court rule changes reflected substantive changes in both state and federal legislation regarding juvenile law, which have significantly increased the number and length of the hearings that are handled by the referees, and explained that in order to obtain and keep federal funding for foster care under the new laws, it was required to meet certain "requirements for judicial determination and hearings" set by the regulations implementing changes to the federal Adoption and Safe Families Act of 1997 (ASFA), 42 USC 621 et seq. Plaintiff asserted that its failure to meet these requirements, which include that certain hearings timely take place at specified intervals during juvenile matters, could result in a loss of the funding. Thus, plaintiffs argued, because "juvenile referees handle the substantial majority of ASFA related hearings in [its] Family Division," it was imperative that those appointed to the position have experience in dealing with the unique body of juvenile law. JAA attorneys, plaintiff argued, having had no general exposure to the procedural or substantive aspects of juvenile court proceedings, are simply not qualified to hold the position.

In April 2005, the trial court issued an order and memorandum of law denying plaintiff's request for relief and granting defendant's motion for an order to show cause why plaintiff should not be held in contempt. Plaintiff subsequently sought leave to appeal that portion of the trial court's order denying its request for relief from judgment. While plaintiff's appeal of that order was pending, the trial court conducted a show-cause hearing and, following that hearing, issued an order and memorandum of law finding plaintiff in civil contempt and requiring that to remedy that contempt, Wilson be removed from his position as family division referee and that a JAA-member attorney be appointed to fill the vacancy. Plaintiff appealed from this order as of right. This Court, however, dismissed the appeal for lack of jurisdiction. Plaintiff thereafter resubmitted its appeal from the order by application and, at that same time, moved to file a supplemental brief in the still-pending application for leave to appeal the denial of its request for relief from judgment—seeking to raise, for the first time, the question whether relief from judgment was also warranted under MCR 2.612(C)(1)(d) on the ground that the arbitration award and confirming order were void.

In September 2005, this Court granted plaintiff's motion to file a supplemental brief addressing MCR 2.612(C)(1)(d), but ultimately denied both appeals "for lack of merit on the grounds presented." *Third Judicial Circuit Court v Judicial Attorneys Ass'n*, unpublished order of the Court of Appeals, entered September 15, 2005 (Docket No. 263413). Our Supreme Court subsequently stayed the effect of the trial court's orders and remanded the matters for consideration by this Court "as on leave granted." As explained below, however, the issues and arguments raised by plaintiff do not warrant appellate relief.

#### II. Analysis

## A. Relief from Judgment

#### 1. MCR 2.612(C)(1)(d)

"In general, judgments . . . entered by our courts are final and binding" and can be set aside only on a proper ground for relief pursuant to MCR 2.612(C)(1). Staple v Staple, 241 Mich

App 562, 564; 616 NW2d 219 (2000). Under MCR 2.612(C)(1)(d), relief must be granted to a party seeking to set aside the judgment if "[t]he judgment is void." See, e.g., *DAIIE v Maurizio*, 129 Mich App 166, 171; 341 NW2d 262 (1983). In challenging the order as void, plaintiff relies on *State Judicial Council v Judicial Attorneys' Association*, 1987 MERC Lab Op 924, wherein the Michigan Employment Relations Commission (MERC) determined that the separation of powers clause of the Michigan Constitution, see Const 1963, art 3, § 2, precluded the inclusion of family division referees within the JAA bargaining unit. Plaintiff asserts that under *State Judicial Council*, promotional opportunities to the position of family division referee were not a proper subject of collective bargaining and, for this reason, Article 12, § 2 of the parties' CBA could not be enforced by the arbitrator or trial court. See *Kukla v Perry*, 361 Mich 311, 324-325; 105 NW2d 176 (1960) ("where an illegal contract is involved, the court[s] will not enforce it or grant relief thereunder"). However, even if we were to accept plaintiff's assertion that separation of powers concerns preclude enforcement of Article 12, § 2, this fact does not render the trial court's order confirming the arbitration award "void" for purposes of obtaining relief from the order pursuant to MCR 2.612(C)(1)(d).

A "void judgment" has been defined as "[a] judgment that has no legal force or effect, the invalidity of which may be asserted by any party whose rights are affected at any time and any place, whether directly or collaterally." Black's Law Dictionary (7th ed), p 848. "A judgment is 'void' only if it is beyond the power of the court to render." Dean & Longhofer, Michigan Court Rules Practice (5th ed), § 2612.13, p 511. "In general, that will be the case only if the court lacked jurisdiction over the person or over the subject matter of the action." *Id*.

In contrast, "[a] voidable judgment is a judgment entered erroneously by a court having jurisdiction." 46 Am Jur 2d, Judgments, § 28, p 403.

Erroneous judgments which have been issued by a court with jurisdiction are subject to reversal on timely direct appeal. The fact that an action by a court is contrary to a statute, constitutional provision, or rule of civil or appellate

<sup>&</sup>lt;sup>2</sup> Defendant asserts that plaintiff's challenge in this regard is an impermissible collateral attack against the order confirming the arbitration award, which this Court should disregard. We do not agree. "A collateral attack on a judgment is an attempt to avoid, defeat, or evade it, or deny its force or effect, in some incidental proceeding *not provided by law for the express purpose of attacking it.*" 20 Michigan Law & Practice, Judgment, § 152, p 153, citing Black's Law Dictionary (emphasis added). Because relief from a judgment or order on the ground that the judicial pronouncement is void is expressly provided for by court rule, the challenge at issue does not constitute an impermissible collateral attack. See also *DAIIE*, *supra* at 171 ("[a] judgment which is void may be attacked at any time").

<sup>&</sup>lt;sup>3</sup> As additional support for this proposition, plaintiff cites *St Clair Co Probate Court v Administrators/Supervisors, St Clair Co Probate Court,* 1986 MERC Lab Op 350, and *Monroe Co Probate Court v Monroe Co Probate Court Mgt Ass'n,* 4 Mich Pub Employee Rep ¶22015 (1990), wherein the MERC concluded that the "quasi-judicial" nature of the work performed by juvenile court attorney-referees rendered such positions ineligible for participation in collective bargaining.

procedure makes it voidable or erroneous, rather than void, and thus subject to ordinary appellate or other procedures to correct it. However, while an error of law in the proceedings may furnish grounds for an appeal, it does not invalidate the judgment. [*Id.*]

See also, In re CAS, 128 SW3d 681, 684 (Tex App, 2003) ("[c]ircumstances making a judgment void are rare"). Thus, when both subject-matter jurisdiction and personal jurisdiction over the parties exist, an award is merely voidable, not void. See Abbott v Howard, 182 Mich App 243, 247-248; 451 NW2d 597 (1990). Here, plaintiff does not contend that the trial court lacked jurisdiction over the parties to or the subject matter of the suit to vacate the arbitration award. Rather, it claims that Article 12, § 2 of the CBA was itself illegal and unenforceable, and thus the arbitrator should not have sustained a grievance for a violation of that provision and the trial court should not have confirmed an award on that grievance. The trial court, however, had jurisdiction to enter the order confirming the arbitrator's award. See MCL 423.9d(4) (providing that an arbitration award regarding a labor dispute is "enforceable at law or in equity as the agreement of the parties"). The question of the enforceability of Article 12, § 2 of the CBA does not, therefore, go to the jurisdiction of the trial court, but rather the propriety of the trial court's enforcement of that provision through its order confirming the arbitrator's award. If the court incorrectly enforced Article 12, § 2 by confirming the arbitration award, however, this was merely an error occurring in the exercise of its jurisdiction and does not render the order void.<sup>4</sup> Thus, regardless of whether separation of powers concerns precluded enforcement of Article 12, § 2, plaintiff is not entitled to relief from the trial court's order confirming the arbitration award under MCR 2.612(C)(1)(d).

Because the question whether the parties were constitutionally precluded from bargaining for promotional opportunities to the position of family division referee is thus not relevant to plaintiff's entitlement to relief under MCR 2.612(1)(d), we express no opinion on the matter. We note, however, that plaintiff possessed all the information necessary to challenge Article 12, § 2 of the CBA as an unenforceable violation of the separation of powers clause at the time it filed suit to vacate the arbitrator's award. Indeed, the cases and underlying constitutional principles now relied on by plaintiff to assert the unenforceable nature of Article 12, § 2 were sufficiently settled and available to support such an assertion even before arbitration of the parties' disagreement concerning the requirements of the provision in late 1999. Plaintiff, however, failed to raise the matter before the arbitrator or in the trial court, and thereafter voluntarily agreed to dismiss its appeal of the trial court's order confirming the arbitration award in lieu of litigating the validity of the Article 12, § 2 in this Court at that time. Under these

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<sup>&</sup>lt;sup>4</sup> We reject plaintiff's reliance on *Michigan State AFL-CIO v Employment Relations Comm*, 453 Mich 362, 380 n 9; 551 NW2d 165 (1996) for the proposition that the trial court's order confirming the arbitration award is void, as misplaced. Although the Court therein noted that a collective bargaining provision that encompasses an "illegal" subject of bargaining is "unenforceable," it did not hold that a subsequent order by a trial court confirming or otherwise enforcing such a provision, not challenged as illegal and unenforceable on direct appeal, is "void." *Local 1383, Int'l Ass'n of Fire Fighters, AFL-CIO v City of Warren*, 411 Mich 642, 663; 311 NW2d 702 (1981) is, for this same reason, equally inapposite.

circumstances, plaintiff is not entitled to relief from the trial court's order confirming the arbitration award on the ground that the order erroneously enforces an unlawful contractual provision. To the contrary, it is well settled that relief under MCR 2.612(C) is circumscribed by public policy favoring the finality of judgments and the termination of litigation. See *Wayne Creamery v Suyak*, 10 Mich App 41, 51; 158 NW2d 825 (1968) (in determining whether to grant relief from judgment, court must "balance the policy favoring the correction of error and the policy favoring the finality of judgments"). Here, plaintiff long ago had a full and fair opportunity to ensure that Article 12, § 2 was both valid and enforceable, but failed to avail itself of such opportunity. Rather, as found by the trial court, plaintiff "conceded to the order [confirming the arbitrator's award enforcing that provision] by dropping their earlier appeal." It may not, therefore, challenge the trial court's order through the assertion of a challenge to the enforceability of the Article 12, § 2 not previously raised and litigated either below or on appeal. *Id*.

# 2. MCR 2.612(C)(1)(e) and (f)

Plaintiff also argues that the changed nature and importance—both practical and financial—of the position of family division referee within the juvenile court constitute inequitable and extraordinary circumstances warranting relief under MCR 2.612(C)(1)(e) and (f). Thus, plaintiff argues, it was entitled under these subrules to relief from the order confirming the arbitrator's award. We do not agree. A denial of relief from judgment pursuant to MCR 2.612(C)(1)(e) or (f) is a discretionary decision of the trial court, which this Court will not disturb absent a clear showing of an abuse of that discretion. See *Haberkorn v Chrysler Corp*, 210 Mich App 354, 382; 533 NW2d 373 (1995). An abuse of discretion exists when the trial court's decision falls outside the range of principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

A court may relieve a party from a final judgment or order on the ground that "it is no longer equitable that the judgment should have prospective application," MCR 2.612(C)(1)(e), or for "[a]ny other reason justifying relief from the operation of the judgment," MCR 2.612(C)(1)(f). Unlike a request under MCR 2.612(C)(1)(d), however, a request for relief under these provisions "must be made within a reasonable time . . . after the judgment, order, or proceeding was entered or taken." MCR 2.612(C)(2). "What constitutes a 'reasonable time' varies with the particular circumstances of the case." Dean & Longhofer, *supra*, § 2612.16, p 515. Furthermore, relief may generally be granted under MCR 2.612(C)(1)(f) only where the substantial rights of the opposing party would not be detrimentally affected by amendment or vacation of the judgment or order, and the moving party has demonstrated that extraordinary circumstances make such relief necessary to achieve justice. *Lark v The Detroit Edison Co*, 99 Mich App 280, 283; 297 NW2d 653 (1980); see also *McNeil v Caro Comm Hosp*, 167 Mich App 492, 497; 423 NW2d 241 (1988).

Here, the trial court found that plaintiff was not entitled to the requested relief because amendment of the arbitration award and confirming order would effectively eliminate defendant's sole remedy for its sustained grievance, i.e., the unrestricted appointment of its members to the next three family division referee positions. *Lark*, *supra*. In doing so, the court recognized the need for competency and experience in those appointed to serve as family division referees within the juvenile court, given the specific and exacting nature of the law attendant juvenile proceedings and the financial consequences attendant the failure to timely and

competently oversee those proceedings. The court concluded, however, that the requirement that those serving as juvenile court referees be licensed to practice law, see MCR 3.913, in combination with the availability of materials respecting the conduct of juvenile proceedings available from the both the Michigan Judicial Institute and the Supreme Court Administrative Office, would permit a referee to competently meet such demands "with the support of the bench." While plaintiff flatly disagrees that such measures are sufficient to ensure the timely and efficient administration of justice within the juvenile division of the family court, the abuse of discretion standard recognizes that, in some situations, there will be no single correct outcome. Maldonado, supra; see also Shulick v Richards, 273 Mich App 320, 324; 729 NW2d 533 (2006). Instead, there may be more than one reasonable and principled outcome. Maldonado, supra. Underlying this concept is the possibility that the reviewing court could have reached a different conclusion had it stood in the shoes of the trial court. However, if the result reached by the trial court is within the principled range of outcomes, it has not abused its discretion and the reviewing court must defer to the trial court's judgment. Id. Here, it cannot be said that the trial court's decision to deny plaintiff's request for relief from the order confirming the arbitrator's award for the reasons stated falls outside the range of principled outcomes. Id. Accordingly, we conclude that the trial court did not abuse its discretion in denying plaintiff relief from judgment under MCR 2.612(C)(1)(e) and (f).

The effect of the requested relief and perceived lack of extraordinary circumstances was not, however, the only basis on which the court relied in denying plaintiff relief. Noting that plaintiff had voluntarily dismissed its direct appeal of the order confirming the arbitration award some four years earlier, and that the changes in the law relied on by plaintiff in now seeking relief from that order had "occurred in as early as 2000," the court also expressed concern that plaintiff's request for relief was not made within the "reasonable time" required by MCR 2.612(C)(2). As discussed above, the trial court's concerns in this regard are supported by the public policy favoring finality of judgments. Again, plaintiff was aware of the order requiring that it appoint JAA members to the next three family division referee positions before its voluntary dismissal of its appeal of the trial court's order confirming the arbitration award, and had a full and fair opportunity to ensure that the order was both equitable and enforceable. Plaintiff, however, failed to avail itself of such opportunity until being called to task for having failed to comply with the order—opting only then to assert the equity of enforcing the clear and unambiguous requirements of the order. Courts are generally loathe to grant a party relief when that party's own actions caused such a result. See Limbach v Oakland Co Bd of Co Road Comm'rs, 226 Mich App 389, 393-394; 573 NW2d 336 (1997); see also Kaleal v Kaleal, 73 Mich App 181, 189; 250 NW2d 799 (1977) (noting that the "broad language" of MCR 2.612(C)(1)(f) "was not intended to relieve a party of the necessity for protecting his interest by normally prescribed procedures") (citation and internal quotation marks omitted). It should not, therefore, be heard to challenge the equity of the order in defense of an adjudication of contempt for having failed to abide the terms of the order. Wayne Creamery, supra. Accordingly, we find no abuse of the trial court's discretion to deny plaintiff's request for relief under MCR 2.612(C)(1)(e) and (f). Maldonado, supra.

# B. Contempt

# 1. Adjudication

Plaintiff also argues that the trial court abused its discretion in finding plaintiff in contempt for having appointed a non-JAA member to the position of family division referee in the juvenile court. We do not agree.

A court of this state is empowered by statute to hold a party in contempt for "disobeying any lawful order, decree, or process of the court." MCL 600.1701(g). "Proceedings for civil contempt are instituted to preserve and enforce the rights of private parties to suits and to compel obedience of orders and decrees made to enforce those rights and administer the remedies to which the court has found the parties are entitled." *In re Contempt of United Stationers Supply Co*, 239 Mich App 496, 500; 608 NW2d 105 (2000). The trial court's issuance of an order of contempt is reviewed for an abuse of discretion. *In re Contempt of Steingold*, 244 Mich App 153, 157; 624 NW2d 504 (2000).

Contempt may take the form of disobeying a court order, even an order that is "clearly incorrect," unless the court lacked jurisdiction to issue the order or compliance with the order is impossible. *Kirby v Michigan High Sch Athletic Ass'n*, 459 Mich 23, 40-41; 585 NW2d 290 (1998); see also MCL 600.1701(g) and *People v Hernandez*, 52 Mich App 56, 58; 216 NW2d 438 (1974). In the case of civil contempt, "a finding of wilful disobedience of a court order is not necessary." *United Stationers Supply, supra* at 501. The court need only find that the alleged contemnor "was neglectful or violated its duty to obey an order of the court." *Id*.

Here, in finding plaintiff in contempt of the order confirming the arbitrator's award, the trial court took note that in opposing defendant's motion for contempt, plaintiff sought merely "to reargue the merits of the arbitration award." The court correctly found, however, that regardless of the correctness or legality of the arbitrator's award, "the only issue properly before the Court [was] whether [plaintiff] should be held in contempt for its failure to comply with the arbitration award/court order." *Kirby*, *supra*. In this regard, the trial court determined that the language of the arbitration award was unambiguous, and that plaintiff failed to obey it. Therefore, noting that plaintiff "has not denied [its] failure to comply with the court order" confirming the arbitration award, but rather simply challenged "that the order should be applied in the fashion that this Court has determined," the court adjudged plaintiff to be in contempt. We find no abuse of the trial court's determination in this regard. *Steingold*, *supra*.

Indeed, there is no dispute that plaintiff violated the order confirming the arbitration award by appointing a non-JAA member to the next referee opening. *United Stationers Supply*, *supra*. While plaintiff claimed that the order incorrectly required that it appoint JAA-member attorneys to the next three available "family division referee" positions regardless of whether such openings were in the domestic relations or juvenile divisions, that did not excuse its compliance. *Kirby*, *supra*. Rather, the proper remedy was to litigate its concerns through appeal of the order. *In re Contempt of Dudzinski*, 257 Mich App 96, 112; 667 NW2d 68 (2003). Furthermore, while plaintiff claimed it was impossible to comply with the order, it failed to show that compliance was legally or factually impossible. See, e.g., *Kirby*, *supra* (it was impossible to allow a team to participate in a regional semifinal event when the finals were already underway); *Detroit v Dep't of Social Services*, 197 Mich App 146, 159; 494 NW2d 805 (1992) (it was

impossible to obey an order where doing so would violate the Constitution). Rather, plaintiff merely argued that its chief judge could not follow the order because she believed it to be contrary to her obligation, as chief judge, to use her best judgment in matters affecting the court.<sup>5</sup> The trial court did not, therefore, abuse its discretion in finding plaintiff in contempt.

## 2. Remedy

Finally, plaintiff argues that the trial court "went well beyond what was necessary to remedy" its contempt in ordering that Charles Wilson be removed from his position as family division referee. Again, we disagree. As with the decision to hold an individual in contempt, a trial court has discretion to determine the appropriate remedy for contempt. See, e.g., *People v Ahumada*, 222 Mich App 612, 617-618; 564 NW2d 188 (1997). We find no such abuse of the trial court's discretion.

As support for its challenge of the trial court's remedy, plaintiff cites only its willingness to create a new family division referee position in which to place a JAA-member. However, as argued by defendant, in order to fully effectuate the arbitration award, as confirmed by the trial court, it is essential that Wilson's appointment be rescinded and his place taken by a JAA-member attorney. Indeed, the creation of a new referee position, without Wilson's removal, would serve merely to delay the subsequent two appointments to which defendant's members are entitled under the arbitration award and confirming order. Given that these appointments have already been considerably delayed as a result of the arbitrator's unwillingness to disturb the appointments that spawned the grievance he was called upon to arbitrate, it cannot be said that the trial court's remedy is an abuse of its discretion. *Id.*; *Maldonado*, *supra*.

Affirmed.

/s/ Alton T. Davis /s/ Joel P. Hoekstra /s/ Pat M. Donofrio

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<sup>&</sup>lt;sup>5</sup> To the extent plaintiff asserts that the obligation of its chief judge to "make all appointments . . . based upon merit," Code of Judicial Conduct, Canon 3B(4), renders it unable to comply with the order, it has failed to show that this ethical obligation entitles it to ignore or otherwise fail to abide by the trial court's order confirming the arbitrator's award. To the contrary, as noted by the trial court in finding plaintiff's failure in this regard to be civilly contemptuous, MCR 3.913(A)(2) requires only that those who serve as juvenile court referees be licensed to practice law in this state. That plaintiff and its chief judge disagree that this minimum qualification is sufficient to ensure competent performance in such a position is a subjective determination that is insufficient to support its claim of impossibility, or to otherwise countenance its violation of the clear and unambiguous requirements of the trial court's order. Further, plaintiff's failure to offer any substantive argument or analysis of the qualifications of the individual JAA-member attorneys who expressed interest in obtaining the position ultimately awarded to Wilson is similarly insufficient to support claim that these members could not ethically be appointed.